IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 204 of 1994
To
FIRST APPEAL No. 213 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMJU CHUNILAL GOVIND & 1 - Appellant(s)
Versus
STATE OF GUJARAT,NOTICE TO BE SERVED ON SP.LD.ACQ.OFFIER - Defendant(s)

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Appearance :
MR CHETAN PANDYA with MR SV RAJU for Appellant(s) : 1 - 2.
MR UDAY BHATT, AGP for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/11/2006

ORAL COMMON JUDGMENT :

This group of 10 appeals arises from common judgment delivered

by the learned 2nd Extra Assistant Judge, Junagadh dated 15th March, 1991 in Land Reference Case No. 3 of 1986 and its allied matters. These appeals have been filed by the original claimants. They are, therefore, heard together and now they are being disposed of by this common judgment.

2. The necessary facts can be stated as under :-

2.1. On 29th January, 1991 a proposal emanated from the Executive Engineer, Road and Building, which was forwarded to the collector for acquisition of lands situated at village Sankhadavadar for construction of Sankhadavadar approach road. In view of the same, proceedings under the Land Acquisition Act [for short 'the Act'] by issuance of notification under section 4 of the Act which was dated 24/5/1982 and was published in the Government Gazette on 10/6/1982. It was followed by a declaration under section 6 of the Act. It was issued on 28/3/1984 and published in the Government Gazette on 12/4/1984. The lands of present appellants, who are original claimants, were sought to be acquired. The details regarding their lands have been adequately described in para. 3 of the judgment. After completing the requisite formalities, the Special Land Acquisition Officer made award on 25/6/1984. He determined the market value at Rs.120/- per Are and based award on the said market value. The claimants- appellants being dissatisfied with the said award, sought reference under section 18 of the Act, which was granted. Hence, the aforesaid Land Reference Cases were filed before the

District Court, which were heard and disposed of by the Ld. 2nd Extra Assistant Judge. Before the Reference Court, the respondent did not resist the reference cases by filing necessary written statement. Further the appellants produced oral as well as documentary evidence; whereas the respondent led no evidence. Ultimately on the basis of the material which was produced before the Reference Court, it arrived at a conclusion that the amount awarded by the Special Land Acquisition Officer was inadequate and the rate of compensation was required to be increased. The Reference Court, therefore, determined the market value of the land at Rs.188/- per Are against the claim of appellants of Rs.600/- per Are. Thus, the Reference Court granted increase of Rs.68/- per Are.

2.2. So far Reference Case No. 10 of 1986 was concerned, the land was non-agricultural land and in that case, the Special Land Acquisition Officer awarded Rs.0-30 ps. Per sq. mtr., but the Reference Court increased it to Rs.3/- per sq. mtr., against the claim of Rs.10/- per sq. mtr. The additional amount was directed to be paid together with proportionate costs and all the incidental statutory benefits including the interest.

3. The appellants have approached this Court by filing these appeals on the ground that considering the material on record, the award made by the Reference Court was quite low. Mr. Chetan K Pandya, learned advocate

appearing for the appellants has taken me through the evidence as well as judgment of the Reference Court. He has submitted that the oral evidence as well as the documentary evidence comprising the sale-deeds have not been appreciated properly by the Reference Court. In his submission, the Reference Court ought to have determined the market value of the land in accordance with the claim made by the appellants. He has further submitted that the Reference Court at-least could have awarded the compensation on the basis of the sale instances produced by the appellants in evidence.

3.1. As against that, Mr. Uday Bhatt, Ld. AGP has supported the judgment of the Reference Court and has submitted that the assessment of the market value made by the Reference Court is just and proper and there is no reason for this Court to interfere with the same. He has submitted that these appeals have no merits and they are required to be dismissed.

4. The record shows that notification under section 4 was issued on 24/5/1982. I am, therefore, required to see whether the finding regarding market value given by the Reference Court is in consonance with the market value prevailing at that time. Of-course, the appellants have claimed Rs.600/- per Are, but the sale instances produced by them do not substantiate their case to the extent of Rs.600/- per Are. However, first I will refer to some relevant portion of the oral evidence given on behalf of the appellants.

4.1. Witness Narshi Nanji, who is claimant of Land Reference Case No. 11 of 1986, has deposed that there was embankment in his field and the field was bounded by hedge. He has stated that his land was irrigated land and raised three different crops in three seasons. According to him, in monsoon, he cultivated groundnut crop and in winter the wheat crop and in summer the pulses. He has also stated about the then prevailing prices of various crops. According to him, in the year 1982 the price of non-irrigated land was Rs.6,000/- per Vigha. He has also referred to the sale transaction between one Fula Jiva and Ravji Kadvabhai, which took place at the rate of Rs.6,000/- per acre [appears to be typographical mistake]. He has stated that so far the irrigated land is concerned, the rate was Rs.10,000/- per Vigha. He has further stated that the land which was sold by Fula Jiva was non-irrigated land and it was at a distance of about two fields away from his own field. In the cross-examination, the witness has admitted that he did not maintain any account books. He has stated that he did not maintain any note about the trees standing on his land and the nature of the land. He has also stated that he was cultivating 15 Vighas of land for the last 20 years.

4.2. Second witness is the claimant of Land Reference Case No. 4 of 1986, namely Bava Keshan. He also refers to the transaction which took place between Fula Jiva and Ravji Kadvabhai in respect of survey no. 119. He has

stated that the market value of non-irrigated land was Rs.6,000/- per Vigha. Witness no. 3 – Mohanbhai Raiyabhai has also deposed the same thing about the transaction between Fula Jiva and Ravji Kadvabhai. So far witness no. 4 – Bachubhai Hirabhai is concerned, he is the claimant of Land Reference Case No. 8 of 1986. His evidence shows that his land was situated adjoining to the land of Fula Jiva, which was sold to Ravji Kadvabhai. According to him, the said land was sold at the rate of Rs.7,000/- per Vigha. According to this witness, around the time of acquisition, the rate of irrigated land was Rs.12,000/- per Vigha.

4.3. So far witness no. 5 – Chiman Jeram is concerned, he is claimant of Land Reference Case No. 10 of 1986. His land was non-agricultural land, which was situated just near the village. The surrounding lands were sold for construction purpose. According to him, the prevailing rate was Rs.20/- per sq. yard. He, therefore, stated that he deserved compensation on the basis of the said rate. So far these witnesses are concerned, there is hardly any cross-examination by the otherside. So far witness no. 10 – Fulabhai Jivabhai is concerned, he is the person who sold his land to Ravji Kadvabhai. According to him, he had sold the land at the rate of Rs.15,000/- per acre. He has also stated that there was no well in the land and the land was non-irrigated land. According to him, the rate of irrigated land would be one and half time more than the rate of non-irrigated land. Even to this witness, there is no effective

cross-examination by the otherside. There are other witnesses also, but I do not propose to reproduce the extract of their evidence since it will be merely repetition but of what has already been stated.

4.4. Over and above this, the appellants have placed reliance on the documentary evidence. The document regarding sale transaction which took place between Fula Jiva and Ravji Kadvabhai is produced at Exh. 29. The transaction took place on 25/1/1982. The document shows that the land bearing survey no. 119 paiki admeasuring 1 acre has been sold to Ravji Kadvabhai together with all the easementary rights and other incidental rights for a sum of Rs.15,000/-. It is the say of the appellants that this land was non-irrigated. However, it appears that the right existing in favour of the vendor to draw water from the well has been passed on to the purchaser. It is, therefore, clear that there is irrigation facility available for this land and it is not non-irrigated land. It appears that if the rate for one Acre is converted into rate for Are, it comes to Rs.375/-. The appellants have tried to show that since their lands were of irrigated lands, the price would be one and half to two times higher, but that version does not seem to be proper. At best, it can be said that the rate of market value prevailing then was Rs.375/- per Are in this area.

4.5. So far the nature of land is concerned, admittedly, it is irrigated land and it appears that it is capable of producing crops in all the three seasons.

The evidence of the appellants show that in monsoon crop of groundnut was grown, whereas in winter and summer the wheat and pulses respectively were grown. It, therefore, further appears that the land was fertile land. Of-course, the appellants have not produced any documentary evidence in the form of extract of revenue record, but then on oath they have stated so and there is no challenge to that part of the evidence in cross-examination by the otherside. So far the Reference Court is concerned, it has not discarded Exh. 29 and has accepted that the transaction was genuine, but without assigning any relevant reason, it has not accepted that the prevailing market rate at that time was Rs.6,000/- per Vigha for irrigated land i.e. Rs.375/- per Are. The Reference Court has merely made a passing observation that there is no evidence with regard to fertility of the land. Even this observation is not based on the facts on record. As already stated above, from the evidence of the witnesses, it clearly transpires that it was fertile land. If this be so, there is no plausible reason why the market value should not have been determined at Rs.375/- per Are. That could have been the nearest to the then prevailing market value. The Reference Court, therefore, appears to have committed a glaring error which is required to be corrected in these appeals.

5. In view of this discussion, I have no hesitation to hold that the prevailing market value of the land was Rs.375/- per Are and the appellants ought to have been awarded compensation on the basis of such market value.

So far Reference Case No. 10 of 1986 is concerned, it is in respect of non-agricultural land. The evidence of the concerned claimant shows that the said land was just touching the village. He has deposed that the prevailing market rate was Rs.20/- per sq. yard. However, no document to substantiate his say regarding rate of Rs.20/- per sq. yard is produced. On the contrary, he has produced on record a sale-deed dated 4/4/1979, which is at Exh. 32. It shows that in April 1979 the rate of land per square yard was Rs.5-50 ps. The present acquisition is of the year 1982 i.e., almost 3 years thereafter. In view of the same, judicial notice can be taken of the appreciation of real estate. It can be, therefore, safely concluded that the prevailing market rate was Rs.6/- per sq. yard. The Reference Court has determined it at Rs.3/- per sq. mtr., but no plausible reason has been assigned by him why such rate was fixed by him. The claimant of Land Reference Case No. 10 of 1986 has claimed Rs.10/- per sq. mtr. But then again no documentary evidence to substantiate claim based on this market rate is brought on record. In my opinion, the market value could be assessed or determined at Rs.6/- per sq. yard i.e. Rs.5.4864 ps. per sq. mtr. [1 sq. yard = .9144 sq. mtr.]. This finding of the Reference Court is also, therefore, modified and it has been upwardly revised. This claimant appellant shall, therefore, be entitled to recover the amount on the basis of Rs.6/- per sq. yard.

6. In view of the aforesaid, these appeals are partly allowed. The

respondent is directed to pay the additional amount to the appellants together with costs and all other incidental benefits including the interest thereon. The net result is that the appeals are partly allowed.

Registry is directed to re-transmit R & P to the concerned Reference Court forthwith.

[Akshay H Mehta, J.]

* Pansala.